DOCKET NO.: MSFT-0740 / 177740.01
Application No.: 10/039,035
Office Action Dated: December 5, 2006

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116

Amendments to the Drawings

The attached sheets of drawings includes changes to Figs. 3A, 3B and 5. The sheets, which includes Figs 3A, 3B and 5, replaces the original sheets including Figs 3A, 3B and 5.

Attachment: 2 Replacement Sheets

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REMARKS

Claims 1-26 are pending in the present application. Claims 1, 9, and 18 are independent claims. Claims 1-26 stand rejected

The drawings were objected to because of minor informalities. Applicants have provided herewith, corrected replacement drawing sheets.

REQUEST FOR RECONSIDERATION OF THE FINAL REJECTION AS PREMATURE

Applicant respectfully requests reconsideration of the final rejection as premature because the Examiner has introduced a new ground of rejection of the claims that was neither necessitated by Applicant's amendments nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

The final rejection of at least claims 9-10, 15-19, and 24-26 under 35 U.S.C. § 103(a) is based on a new prior art reference (Sato) that was not submitted in an IDS under 37 CFR 1.97(b) and not 1.97(c). In accordance with the MPEP, the rejection was therefore premature:

> second or subsequent actions on the merits shall be final,
> *except* where the examiner introduces a new ground of
> rejection that is neither necessitated by applicant's amendment
> of the claims nor based on information submitted in an
> information disclosure statement filed during the period set
> forth in **37 CFR 1.97(c)** ....

MPEP 706.07(a); (Emphasis added.)

Accordingly, Applicants request reconsideration and withdrawal of the outstanding final rejection and reconsideration of the present application based on the amendments and remarks contained herein.

Claims 1-2, 6-10, 15-19, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over APA (art of record, Background of the Invention, pages 1-2) in view of Oldman (art of record, US Patent No. 6,769,115) and further in view of "Fast Compiler Re-Targeting to Different Platforms by Translating at Intermediate Code Level" to Sato (Sato).

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With respect to claim 1, the examiner indicates that the APA discloses *a computer system, comprising:*

> a processor (e.g., page 2: 2-10);
>
> an operating system having a selected driver that interacts with a computing component (e.g., page 1: 7-13);
>
> a plurality of application instructions (e.g., page 1: 27-28), said instructions being in an intermediate language readable by an intermediate language compiler (e.g., page 2:11-16);
>
> a plurality of runtime instructions, said instructions being in an intermediate language readable by an intermediate language compiler (e.g., page 1: 21-26); and
>
> an intermediate language compiler (e.g., page 2: 11-17).

Action p. 4.

The Examiner indicates that the APA does not explicitly disclose "[said intermediate language compiler] compiles the application instructions and the runtime instructions into a combined set of instructions executable by the processor for interacting with the selected driver." The Examiner also contends that, "Oldman explicitly discloses Application Binary 113(a-c) (FIGs. 3 and 8) as a combined set of instructions (recited in claim 1) and as a single executable program (recited in claims 9 and 18)." Action p. 5. The examiner then points out that "Neither APA nor Oldman explicitly discloses the set of application instructions and the set of runtime instructions being in an intermediate language". For the compilation of source code into intermediate language, the Examiner relies on Sato.

Applicants respectfully submit that the Examiner has once again missed an important element of the Applicants' claim. That element was missing from Oldman as was pointed out in the previous response and is also missing from Sato. To be clear, Applicants are not claiming the compilation of an application into an intermediate language. Rather, the applicants claims a specific use and system of an intermediate language compiler that is not taught in the prior art. In particular, the Applicants claim "an intermediate language compiler capable of compiling the application instructions and the runtime instructions into a combined set of instructions executable by the processor for interacting with the selected driver".

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Accordingly, it is the intermediate compiler that is resident, for example, on a target machine that does this. The compiler of Sato does something completely unrelated. Sato outputs a multiplicity of intermediate languages that are targeted for different systems. For example, Sato teaches an intermediate language MIIL that works on a Sparc platform, OIL that works on a MC680x0 platform and UCODE that works on a MIPS platform. That has nothing whatsoever to do with the Applicants claims. The Sato system merely teaches that a common front end can be retargeted by translating one form of IL to another form of IL. Whereas the IL compiler of the present invention performs a function not taught by the references: compiles application instructions and runtime instructions that are received in an IL into a combined set of instructions executable by the processor for interacting with a selected driver. That is, the IL compiler of the present invention has knowledge of a particular selected driver.

For at least the foregoing reasons, independent claims 1 patentably defines over APA in view of Oldman and Sato. Inasmuch as claims 2-8 depend from claim 1, Applicants submit that they also patentably define over the cited references at least for the same reasons.

Regarding independent claims 9 and 18, the examiner reiterated the rejection of claim 1. Applicants reiterate the arguments above. Moreover, Applicants submit the claimed "compiling the application program and the runtime program into a single executable program for execution on a target computer system" further clarifies the distinction. For that reason all of the elements of claim 9 are not taught by Oldman and in not taught by APA in view of Oldman and/or Sato. Claim 18 has similar limitations and likewise patentably defines over APA in view of Oldman and Sato.

Inasmuch as claims 10-17 and 19-26 depend from claims 9 and 18, Applicants submit that they also patentably define over the cited references at least for the same reasons.

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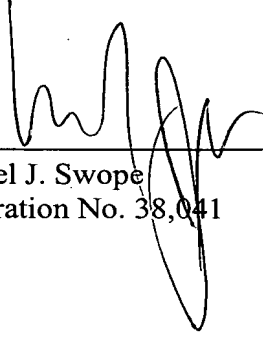**Office Action Dated:** December 5, 2006

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CONCLUSION

Claims 1-26 are in condition for allowance. An early notification of allowance is respectfully requested.

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